

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ERIC SMITH,	:	APPEAL NO. C-090264
	:	TRIAL NO. SP-0800130
Petitioner-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
STATE OF OHIO,	:	
	:	
Respondent-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In 1998, petitioner-appellant Eric Smith pleaded guilty to and was convicted of gross sexual imposition and sexual battery. Smith was designated a sexually-oriented offender. Under former R.C. Chapter 2950, Smith was required to annually register for ten years.

Smith received a notice from the Ohio Attorney General stating that he had been reclassified under Am.Sub.S.B. No. 10 (“Senate Bill 10”) as a Tier III sex offender and that he was required to register with the local sheriff every 90 days for life. Smith filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. The trial court overruled Smith’s constitutional challenges to Senate Bill 10 and denied his R.C. 2950.031(E) petition, finding that

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Smith had been properly reclassified as a Tier III sex offender. The court found that Smith was not subject to community notification.

Smith's sole assignment of error, which alleges that the trial court erred in overruling his R.C. 2950.031(E) petition to contest his reclassification, is overruled.

"The Ex Post Facto Clause applies only to criminal statutes."² We held in *Sewell v. State*³ that the tier-classification and registration provisions of Senate Bill 10 are remedial and not punitive, and that they do not have the effect of converting a remedial statute into a punitive one. Because Senate Bill 10's classification and registration provisions are civil and remedial, not criminal, they do not violate the constitutional ban on ex post facto laws.

The retroactive application of Senate Bill 10's tier-classification and registration requirements does not violate the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution, the Double Jeopardy Clause of the Ohio Constitution, or the separation-of-powers doctrine.⁴ Smith's arguments under the United States Constitution are also meritless based on *Sewell's* reasoning.

Smith has no standing to challenge Senate Bill 10's residency restriction because he has not shown that he lives in or owns property within the restricted area or that he has been forced to move outside the restricted area.⁵ We note that the Ohio Supreme Court held in *Hyle v. Porter*⁶ that because the residency restriction in former R.C. 2950.031 was not expressly made retrospective, it could not be applied to an offender

² See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570, citing *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504, 115 S.Ct. 1597, and *Collins v. Youngblood* (1990), 497 U.S. 37, 43, 110 S.Ct. 2715.

³ 181 Ohio App.3d 280, 2009-Ohio-872, 908 N.E.2d 995.

⁴ *Id.*

⁵ See *State v. Randlett*, 4th Dist. No. 08CA3046, 2009-Ohio-112; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *State v. Duncan*, 3rd Dist. No. 7-08-03, 2008-Ohio-5830.

⁶ 117 Ohio St.3d 165, 2008-Ohio-542, 882 N.E.2d 899.

who had bought his home and committed his offense before the effective date of the statute.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 31, 2010
per order of the Court _____.
Presiding Judge